



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 7896-99
23 March 2000

MAJ [REDACTED] SMC
[REDACTED]

D [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 10 December 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division, dated 10 February 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 2000 and 2001 Lieutenant Colonel Selection Boards. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

7896-99

IN REPLY REFER TO:

1610

MMER/PERB

DEC 10 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MAJOR [REDACTED] USMC

Ref: (a) Major [REDACTED] DD Forms 149 (3) of 9 Sep 99
(b) MCO P1610.7C w/Ch 1
(c) MCO P1610.7C w/Ch 1-2
(d) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 30 November 1999 to consider Major [REDACTED]'s petition contained in reference (a). Action as indicated was requested on the following fitness reports:

a. Report A - 860627 to 861231 (AN) -- Replacement with a "not observed" report. Reference (b) applies.

b. Report B - 870101 to 870524 (CH) -- Replacement with a "not observed" report. Reference (c) applies.

c. Report C - 970801 to 980430 (CH) -- Deletion of the ranking under "Reporting Senior's Certification." Reference (c) applies.

2. With regard to Reports A and B, the petitioner contends that he was never informed that Major [REDACTED] would be his Reporting Senior; that he never met that individual nor was he ever counseled or contacted by Major [REDACTED]. Therefore, he believes there was no basis for observed reports. Concerning Report C, the petitioner argues that he should not have been rated against [REDACTED] since that person had been transferred prior to the end of the reporting period. This, he believes, was substantiated by the Reporting Senior when, in the narrative portion of Report C, he stated that the petitioner filled billets as both the Squadron S-30 and S-40.

3. In its proceedings, the PERB concluded that all three reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MAJOR [REDACTED] USMC

a. At the outset, the Board emphasizes that in attempting to establish his argument concerning Reports A and B, the petitioner has cited the incorrect directive. References (b) and (c) were in effect when those evaluations were rendered, not MCO P1610.7D as has been contended.

b. Per the provisions of paragraph 6005 of references (b) and (c), both Reports A and B cover academic duty when the petitioner was attending UNC-Wilmington under the Degree Completion Program. Those evaluations were based on infrequent observation by the Reporting Senior and contain "various combinations of Section B markings according to the RS's observation assessment and ability to evaluate them" as stipulated by paragraph 6005 of references (b) and (c). This action is in full compliance with the spirit and intent of subparagraph 6005.2b of those references.

c. When the petitioner signed Item 22 of Reports A and B, he certified that all data contained in Section A was correct. That information includes, but is certainly not limited to, identification of the Reporting Senior of record. To argue an incorrect Reporting Senior some 13 years after the fact lacks both timeliness and substantiation as well. In this regard, the Board observes that the petitioner has failed to substantiate any of his allegations. Likewise, it would appear from the content of both reports that Major [REDACTED] was able to track the petitioner's academic duty progress and overall value of his efforts. Succinctly stated, the petitioner has not documented how the reports are unjust or that he may have rated more than what has been recorded.

d. In signing Item 22 of Report C, the petitioner not only verified that his primary duty was as the S-4, but that he saw the completed fitness report. The Reporting Senior duly noted in his Section C comments that the petitioner filled both the S-3 and S-4 billet for 60 of the 270 days covered. What any of that has to do with (then) [REDACTED] is not substantiated. Likewise, it is not documented how that would somehow invalidate any part of the Reporting Senior's evaluation.

e. Contrary to the petitioner's assertion, the Automated Fitness Report System reflects that Lieutenant Colonel [REDACTED] as the Reporting Senior for [REDACTED] and submitted a change of

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MAJOR [REDACTED] USMC

reporting senior (CH) fitness report on him for the period 970816 to 980612 (MWSS-274-2 S-3). Thus, the Reporting Senior's ranking on page two of Report C is proper.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Reports A and B should remain a part of Major [REDACTED]'s official military record and that Report C should remain as configured.

5. The case is forwarded for final action.

[REDACTED]
R.
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



7896-99

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600
MMOA-4
10 Feb 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR MAJOR [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] USMC
of 2 Feb 00

1. Recommend disapproval of Major [REDACTED] implied request for removal of his failures of selection.
2. Per the reference, we reviewed Maj [REDACTED]'s record and petition. He failed selection on the FY00 and FY01 USMC Lieutenant Colonel Selection Boards. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for replacement of the Annual fitness report of 860627 to 861231 and the Change of Reporting Senior fitness report of 870101 to 870524 with Not Observed reports, and the removal of the ranking under Reporting Senior Certification on the Change of Reporting Senior fitness report of 970801 to 980430. Major [REDACTED] implies a request for removal of his failures of selection.
3. In our opinion, the petitioned reports present minimal competitive concern to the record. Two of the petitioned reports were written eleven years prior to the FY00 Board convening. The removal of the ranking on the fitness report of 970801 to 980430 would not significantly change the Value and Distribution as a major, still placing him in the middle of the pack.
4. In summary, we believe Maj [REDACTED]'s petition is without merit. His record received a substantially complete and fair evaluation by both Boards. Had the petitioned reports been replaced or corrected by the PERB, his record would not have been significantly improved. Therefore, we recommend disapproval of Major [REDACTED] implied request for removal of his failures of selection.

Subj: BCNR PETITION FOR MAJOR [REDACTED]
[REDACTED] SMC

5. Point of contact is [REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division